

# Human Cloning from the Viewpoint of Fiqh and Ethics

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## ABSTRACT

Muslim Scholars and Islamic official Institutions consider human cloning as opposing religious doctrine, and forbidden. Their ideas are based upon some theological and juridical arguments, including: posing a challenge to the creative power of God, breaking the tradition of marriage, breaking the tradition of diversity in creatures or species, making changes in divine creatures, game with creatures and so on. They also refer to some verses of holy Quran, and take consequences against the permission of human cloning. The author is going to say that the above mentioned arguments are not coincided with the traditional method of Islamic juridical reasoning (Al-Ijtihad) The author offers some general solutions for formulating Islamic doctrines in the field of human cloning.

**KEY WORDS:** Ethics, juridical reasons, Genetics engineering.

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## INTRODUCTION

The Catholic Church as well as Muslims pays special attention to the institution of family and its divine sanctity character. This common stance has led to the similar concerns in many issues of genetic engineering, including the issue of cloning. As a result, we have witnessed a special sensibility of the Catholic faith and many Muslims towards this theme, which both have raised it before numerous forums.

The Catholic Church decisively condemns any efforts aimed at human cloning, calling it an unethical act that violates human dignity. As seen by the Catholic Church, there is no difference between human cloning and therapeutic cloning, thus both are to be rejected, because in the latter case, too, **na oyrb ne** takes shape, which is subsequently destroyed, and this runs opposite to the most elementary right of any human being, namely the right to live. Thus, the Catholic Church demonstrates a certain internal consistency on

this issue. However, due to a number of considerations, it had to meet the demands of Catholic believers in the field of genetic engineering, forcing it to loosen its theoretical rigidity in several cases.

In its criticism of human cloning, the Catholic Church mostly refers to theological and ethical arguments, the most important ones being the neglect of human dignity, the instrumentalization of mankind, and the weakening of the role of the family. The Catholic Church opposition to human cloning actually is part of its opposition to issues like abortion and euthanasia, and therefore has to be understood within that broader framework.

Muslim jurists (Fuqaha), for their part, view human cloning as “haram” (forbidden by religion), and they list numerous arguments against it. In their view, human cloning is “haram” for theological, fiqh-related, ethical, social, psychological and scientific reasons. They see human cloning as a means of weakening religious beliefs, changing God’s creation, violating human dignity, disturbing family life, and bringing heritage and lineage regulations into disarray. Therefore they hold cloning even for partners living together to be illegitimate, showing consensus on this issue. In this regard, Muslim fuqaha and the Catholic faith side with each other.

This ban has been expressed in several declarations, Fatwas and Statement. Islamic organizations and independent personalities have repeatedly emphasized this ban. The “Mağma’ al-Bohūs al-Islamyya” (“Conference of Islamic Discussions”) of the Al-Azhar University has issued a Fatwa in defiance of human cloning, asking the governments of the world to prevent it in whatever form it might

be practiced. [The news of this ban can be found in the Arabic site of “Nida al-Eman” under [www.al-eman.com](http://www.al-eman.com) from Dec. 29, 2002 as well as the Arabic site of Al-Khalij under [www.gulfpark.com](http://www.gulfpark.com) from Oct. 16, 2002] The European Council on proclamation of decree “Al-Ifta and Research” (Al-Mağlis al-Urubī lil Ifta’ WA al-Bohūs) too has called human cloning “haram”. [The text of the debate on this issue is placed on the site of this Council, see [www.ecft.org](http://www.ecft.org) from Oct. 22, 2004.] Also, the office of “Rabitatu al-‘Alam al-Islamī”, stationed in Mecca, has condemned human cloning as “haram” and asked for a worldwide law to be drafted against it. Furthermore, a seminar held in Morocco in 1997 ended with several recommendations, one of them calling for the “prohibition of human cloning by the transfer of stem cell of body to the nucleus-free ovule”.

The final declaration of the “Council of Islamic Fiqh” clearly reflects this unanimous viewpoint. After a preamble about man’s position in the order of being and consent of Islam to the pursuit of knowledge and scholarship, this declaration asks for a “ban on human cloning by the two above mentioned methods or any other method that leads to the increase of mankind.” [The Journal of “Mağma’ al-Fiqh al-Islamī”, p. 421] The “two above mentioned methods” are, first, the embryonic cloning with the help of zygotes or the impregnated egg and its subsequent division, and second is body cloning. Finally, the Health Ministers of the Persian Gulf Cooperation Council have declared their total objection to human cloning, calling it the biggest crime that is irreconcilable with medical ethics. It is worth adding that the “Mağma’ al-Bohūs al-Islamyya” of the Al-Azhar University not only totally banned cloning, but also recommended the Islamic punishment envisaged for “muhāribis”

(i. e. “combatants”) to be enacted in the case of those practicing this technology. This Mağma‘, in a declaration issued 12 Dec 2002, repeated its previous viewpoint and added that cloning changes mankind, who has been given dignity by God, to a playground for experiments and the production of disfigured and deformed types of man. Therefore, this declaration says, it is necessary to rise against cloning as vehemently as possible. [Al-‘Alam al-Islamī, 1423 A.H., p. 1777].

The most important theological arguments of Islamic scholars against human cloning center around the following points: 1) doubting creation; 2) the issue of miracles; 3) the theme of challenge with the Creator and interfering with his acts; 4) breaking the tradition of diversity ; 5) jeopardizing Muslim religious beliefs; and 6) playing with creatures by changing their genes. And on the ground of religious jurisprudence their main arguments are that cloning 1) terminates the necessity of sexual reproduction; 2) confuses the lineage; 3) creates uncertainty about family affiliations; 4) causes confusion about alimony and inheritance regulations; 5) abolishes the institution of marriage and family; 6) makes void the meaning of freedom; 7) enables illegitimate relations; 8) fosters homosexuality; and 9) leaves room for criminal misuse.

Among Shiite fuqaha there is no unanimity on this issue; instead, four separate standpoints can be distinguished among them, reaching from full consent to total rejection. Shiite opponents hold cloning to be “haram” not for theological reasons, but solely because of certain religious-judicial, legal and social deliberations. But even opponents of human cloning hold therapeutic cloning to be permissible. This position separates them from

the catholic view on the matter. Actually, since the opponents of cloning among the Shiites reject this practice only on the basis of fiqh and social considerations and not for reasons of theology and faith, they are somewhat separated from the Sunni viewpoint, too. They also deviate from the catholic path by allowing for therapeutic cloning.

### **Analysis of the theological reasons for banning human cloning**

Are the above mentioned theological arguments strong enough to prove the validity of the Sunnis’ claim, and can a ban on human cloning be rationally deduced from them? At first sight the answer seems to be positive, especially since a strong solid consensus exists on the case, brought about by a judicial council and on the basis of Fatwas issued by high-ranking Sunni scholars, a consensus that draws up such a long list of objections to human cloning that at times even the very idea of rationally criticizing it does not occur to one’s mind. Nevertheless, when these arguments are examined carefully and stripped of their evocative character, they seem to be somewhat exaggerated and in essence lacking the convincing power of rational argumentation. In fact, some of these arguments even do not obey by the elementary principles of rational argumentation so that the purported conclusion cannot logically be drawn from the premises. Besides that, some of the arguments even have nothing to do with human cloning, while some contradict and neutralize other ones. Some, in turn, are irreconcilable with the principles of Ijtihad and, if accepted, one is forced to follow premises that Islamic scholars would not accept.

It seems that among some objectors of cloning there still exists; there is no clear

understanding of the mechanism of this relatively new technology so that most of their charges against it are irrelevant. Therefore, it would be appropriate for these objectors to seriously study the matter first before judging about it, thus gaining a more profound knowledge and reaching a sounder judgment.

Some Shiite scholars take the principle of permission (اصاله الاباحه-Principle of permission) as their starting point, claiming all of the arguments against human cloning to be insufficient and hence licensing this act. They declare cloning to be one of man's recent achievements that enables a deeper insight into divine habits and can be gainfully used without a need to worry about mankind. This viewpoint distinguishes them from the catholic faith and from some of the Sunni scholars. Their stance is compatible with the prevailing principles of Shiism.

It must be said that among Muslims a serious study of this matter has still not taken place, while those religious scholars who did occupy themselves with it have mostly confined themselves to issuing Fatwas, whereas on the other hand scientists have not profoundly analyzed the matter neither. Therefore it is necessary to view this issue not as an isolated problem but as a part of genetic engineering as a whole. The various dimensions of the issue must be taken into consideration and instead of an attitude that is determined purely by religious legalism (fiqh), one should analyze its ethical aspects as well and drive the discussion ahead with considering the human status of the fetus. It is in this sense that the following proposals are suggested here:

#### a) Establishing fundamental concepts and guiding principles

The Islamic countries must be enabled to formulate their detailed positions on this kind of issues that face them with challenges, objections, and intellectual and theoretical gaps, while at the same time they are potentially rich in their argumentation due to the richness of their religious orientation. Here proper attention must be paid to the weaknesses and do appropriate acts in order to remove them.

One of these weaknesses is the lack of development of Islamic viewpoints on fundamental concepts. To take an example, in the International Declaration of Human Genome and Human Rights (in its Preamble, in its Articles 10, 11, and 15, passim) as well as in the International Declaration on Human Genetic Data (in its Preamble, in Article 10, passim) three concepts have been emphasized, i. e. "human rights", "fundamental freedoms", and "human dignity", while these documents have been ratified with the aim of protecting these concepts. The truth is that Muslims have hardly reached a consensus on the framework of these concepts, especially the last one which is the cornerstone of the idea of human rights. Of course these concepts, by their very nature, are matters of wide dispute and even theoreticians of human rights are divided among themselves in their analyses and argumentations. But it is undeniable that Muslims are much more divided on these matters than non-Muslims. When according to paragraph B of Article I of the International Declaration on Human Genetic Data every intervention with the human gene has to be in accordance with the international system of human rights, it is impossible to take serious action on this matter without clear, explicit,

and precise positions on the principles of this system.

#### **b) Developing an integrated and consistent ethical system**

Another shortcoming relates to the drawing up of a unified and consistent ethical system that makes analyses of new ethical problems possible. Despite the fact that Islamic texts offer substantial material for ethical teachings, these teachings have not been worked out properly, and no unified and effective ethical theory has been deduced from these texts. But, as Mary Robinson has rightly pointed out, even the universal system of human rights is suffering from this weakness. As she put it, a major unknown matter is the “domain of ethics” in its specific sense. It is not exaggerated to say that today we are living in an ethical void. Former certainties and hypothesis are no longer valid. Of course we are not lamenting the fading away of the past hypothesis. But the absence of systems of belief and their rules strengthen in us the feeling that our world is passing through an unstable phase that removes us more and more from the perspective of a new world order [Robinson, Mary, “les clés du XXI<sup>e</sup> siècle” édition seuil /UNESCO Tr. Into Persian by E.Beigzadeh, Tahghighate hughghi, No.33-34 2001, p. 329.]. At any rate, in their encounter with the astonishing achievements of biotechnology and the numerous human and ethical questions connected with them, Muslims are seriously in need of a comprehensive ethical theory about the present circumstances. It is difficult to take far reaching and congruent steps to implement the points of the world declarations without having a clear stance on ethical theories. Such a stance is necessary, first because no legally binding concept controlling the results of biological technology, including the area of

genetic research and interference, yet exists. Notwithstanding the viewpoint of the theory of natural law, which holds that at least in fundamental issues the true law still is the ethical law, we need an ethical system, because the legal system, especially in newly emerging areas, is closely connected with this law. The law of these areas, especially in the early stages of its formation, are clearly and significantly influenced by the principals of ethical teachings, whose main characteristics, according to Warnoch [Warnoch, G.1983, pp. 69 and 91], include the criteria of “sufficiency”. Ethical teachings, by their nature, are an expression of human interests, and they intend to enhance mankind’s benefits, general solidarity and happiness. The principles that find broad acceptance in society, and individuals as well as governments should adhere to them even before drafting legal enforcement guarantees. [For a study of the relation between legislation on the legal and ethical level, see Gorewich, G.Tr. into Persian, by H.Habibi, 1979, pp. 225-228].

A clear stance on ethical theories is secondly needed because adhering to different ethical theories leads to entirely different results. For instance, there might be actions that are quite permissible in the utilitarian school – which aims at a maximal gain for a majority of the people – that are not allowed in the Kantian ethical system – which sees each individual as the goal of creation. It is interesting to know that in 1984 Derek Parfit in his book “Arguments and Ethics” defended an ethical theory that examined ethical problems resulting from social policies and that have an impact on the structure and welfare of future generations; he thus argued against the proliferation of nuclear weapons. At the same time, however, other philosophers of ethics

supported a viewpoint that eventually defended the need for these weapons. (R .Nobahar “, International Declaration on Human Genetic data: Concept , Approaches, and Its compatibilities with Islamic Perspectives” in Bimonthly)

Thirdly, the scope of technology is so wide and almost unlimited that many of its results will affect the lives of future times, i. e. the life of those who are not yet born, who are not responsible for them and who are not yet entitled to them neither in legal terms. But still, from an ethical and humanitarian point of view, we are not entitled to neglect them.

### c) Elaborating the relation between “Fiqh” and “Ethics”

Besides an ethical system, the relation between “Fiqh” and “Ethics” has to be formulated as well. In some Islamic countries like our own one, Iran, Fiqh in its conventional meaning influences the structure of the judicial system, while in other Islamic countries it plays at least some role in shaping the thoughts as well as the culture of society. The question is to what extent this intellectual system feels obliged to follow the principles of an ethical system. Even if the problem mentioned in the previous paragraph is solved and a comprehensive and effective ethical system is conceived, will the prevailing religious-judicial inferencing methods feel obliged to respect the framework of that system? Are there any general ethical values beyond religious ones that religious lawgiving (fiqh) would see as binding, whether if there are legal and juridical arguments or not? Thus, one of the voids in the countries such as ours is the lack of an exact elaboration of the relation between the “ethical system” and the “Islamic legal system”. Hence, no country and no legal system that wants to be

active and influential in these areas can easily disregard ethical necessities.

### Conclusion

This author holds that the analyses of man’s position and status given in religious texts are not of a merely anthropological or metaphysical nature, but lead to the conclusion that man, not only in an ontological sense, but also in his legal and social relations enjoys dignity as a fundamental right. The verse (Ayah) “Keramah” of the Holy Koran (Al-Israa, 7) as well as other religious teachings allow for “dignity” can be understood as each individual’s inalienable respect, [a kind of] a primary and natural status that is imperishable and that, as a special criterion bestowed on man by God, imposes certain ethical and legal obligations on each person. Among these, one can point at the ethical obligation to protect the status of dignity as a divine bestowment, which everyone in turn can legally claim to be respected by others. Furthermore, one can point at the fact that because of the universality of the concept of man’s dignity no one is entitled to violate another person’s dignity but is rather held to view its respect as an obligatory task.

In a religious interpretation, the right of dignity has at the same time the character of a duty, as much as the right to live obliges man before God to protect life; thus, no one can renounce his right of dignity and self-respect.

Obviously, this principle has such a broad conceptual application that it can limit many genetic and biologic researches. Besides a research and interference done without the affected person’s consent, i. e. one that violates the principle of individual autonomy, actions undertaken with a person’s consent, too,

should not be in violation of man's dignity . In other words, the principle of consent and of freedom of will, despite all its importance in many legal actions including the discussion of genetics, succumbs to the principle of man's dignity. As a result, man cannot legally give his consent to a form of genetic interference with his genome that violates his respect and dignity; just as another person neither can, pointing at the "individual's consent", approve any interference with his genome that disregards the principle of man's dignity.

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The teachings of Islam, legal or ethical ones, are of such a broad scope that they allow for endorsement of the current studies on man's genetic structure while at the same time they take serious the worries connected with these studies as well as their means and their findings. In this area, what Muslims need in order to keep pace with the world community, is first of all a sound understanding of the facts involved as well as of the short and long range consequences of genetic studies and interferences. The next step is the conceptualization of a compatible and coherent ethical system by turning to fiqh as well as trying to establish a legal order in accordance with this ethical system. Further and more exact examinations of Islamic viewpoints on principles such as man's dignity, the principle of solidarity among human beings and the need for altruism, and the principle of justice and caution (احتیاط), as well as studies on the way of implementing these principles in the domain of genetic studies, especially the study of the relation between these principles in case they should conflict with each other, all these deliberations will furnish Muslims with a solid ground for the issue under discussion.